8C/SC

FILED

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Phil Lombardi, Clerk
U.S. DISTRICT COURT

AO 241
(Rev. 10/07)

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: 12 CV - 471 CVE PJC
Name (under which you were convicted): Antonio Wayne Sells	Docket or Case No.: CF-2010-1044 F-2011-426
Place of Confinement: Mack Alford Correctional Center	Prisoner No.: #448149
Petitioner (include the name under which you were convicted) Antonio Wayne Sells	v. Respondent (authorized person having custody of petitioner) Anita Trammel (Warden)
The Attorney General of the State of Oklahoma	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
District Court of Tulsa County

(b) Criminal docket or case number (if you know): CF-2010-1044

2. (a) Date of the judgment of conviction (if you know): May 4, 2011

(b) Date of sentencing: May 16, 2011

3. Length of sentence: Thirty (30) years imprisonment

4. In this case, were you convicted on more than one count or of more than one crime? ❒ Yes ☑ No

5. Identify all crimes of which you were convicted and sentenced in this case:
Attempted Robbery w/ Firearm

6. (a) What was your plea? (Check one)

☑ (1) Not guilty ❒ (3) Nolo contendere (no contest)
❒ (2) Guilty ❒ (4) Insanity plea

✓ Mail __ No Cert Svc __ No Orig Sign
__ C/J __ C/MJ ✓ C/Ret'd __ No Env
__ No Cpys ✓ No Env/Cpys __ O/J __ O/MJ

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? Not Applicable

(c) If you went to trial, what kind of trial did you have? (Check one)

☑ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☑ No

8. Did you appeal from the judgment of conviction?

☑ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Oklahoma Court of Criminal Appeals

(b) Docket or case number (if you know): F-2011-426

(c) Result: Affirmed

(d) Date of result (if you know): 6.14.12

(e) Citation to the case (if you know): (See Attachment "A")

(f) Grounds raised: Seven Grounds Raised: 1) Suggestive identification; 2) Insufficient evidence; 3) Arrested without probable cause; 4) Prosecutorial misconduct; 5) Sentence excessive; 6) J&S failed to accurately reflect that Appellant's finding of guilt was the result of a jury verdict and not a plea of guilty; and 7) cumulative effect of trial errors deprived Appellant of fair trial.

(g) Did you seek further review by a higher state court? ☐ Yes ☑ No

If yes, answer the following: N/A

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second petition, application, or motion, give the same information: N/A

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? N/A

❐ Yes ❐ No N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) If you filed any third petition, application, or motion, give the same information: N/A

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? N/A

☐ Yes ☐ No

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☑ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No N/A

(3) Third petition: ☐ Yes ☐ No N/A

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: THE EYEWITNESS IDENTIFICATION OF PETITIONER WAS AN OVERLY SUGGESTIVE, ONE-MAN LINE-UP THAT VIOLATED PETITIONER'S RIGHT TO DUE PROCESS AND A FAIR TRIAL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At preliminary hearing Ms. Bible gave testimony contra-dictory to the arresting officer's that she was approached by AR and asked to file her complaint. AN explicitly told at that time by same AR that 'suspect No. 2' was under arrest in his patrol car. She then approached the vehicle and tried to ask why she was approached by him, believing AR's description correct.

(b) If you did not exhaust your state remedies on Ground One, explain why:

These matters were exhaustedly submitted for review at preliminary hearing ( ), motion to suppress ( ) and renewed at trial.

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☑ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☑ No

(2) If your answer to Question (d)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No N/A

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No N/A

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Res judicata barred collateral review of same matters.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: "NONE"

GROUND TWO: The prosecution's case was insufficient to convict petitioner of the crime charged.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The state failed to prove the facts required to sustain a conviction based on the elements for attempted robbery with a firearm as to this petitioner. Ms. Bible's recorded statements show her identification of Petitioner was irreparably tainted by the arresting officer's statement that petitioner was "Suspect No. 2" and then allowing Ms. Bible to view petitioner in patrol car. The arresting officer tried to claim that Ms. Bible approached him (A.R.) first but this is contrary to Ms. Bible's in court testimony.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

I exhausted my state remedies on Ground Two.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☑ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☑ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition? ❒ Yes ❒ No N/A

(4) Did you appeal from the denial of your motion or petition? ❒ Yes ❒ No N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ❒ Yes ❒ No N/A

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you : have used to exhaust your state remedies on Ground Two "NONE"

GROUND THREE: ARRESTED without probable cause. All evidence obtained therefrom was fruits of the poisonous tree and should have been excluded.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Under oath, AR Abbey claimed he merely detained petitioner and denied that he had place petitioner under arrest prior to the one-man show-up for the eyewitness. Without the evidence of the unnecessarily suggestive eyewitness identification, the state would not have been able to establish the ~~necessary~~ elements of any crime in relation to this incident on March 11, 2010, in Sand Springs, Oklahoma.

(b) If you did not exhaust your state remedies on Ground Three, explain why? I did exhaust All state remedies on Ground Three.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☑ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:** N/A

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☑ No

(2) If your answer to Question (d)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No N/A

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No N/A

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: NONE

GROUND FOUR: The cumulative effect of the above errors deprived Petitioner of his right to a fair trial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioners urges this Court to review the facts and Records in his case as related to the above cited errors. Should this Court find that slight abrogations and derogation of his rights occurred, that this Court opines that relief is warranted.

(b) If you did not exhaust your state remedies on Ground Four, explain why: I exhausted this argument on direct appeal to the Oklahoma Court of Criminal Appeals (See: Brief Attached)

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☑ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:** NONE

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No N/A

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No N/A

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No N/A

(6) If your answer to Question (d)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Res judicata prohibitions

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: — NONE —

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☑ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☑ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☑ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ❒ Yes ❒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ❒ Yes ❒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

or any other relief to which petitioner may be entitled.

____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on ______________ (month, date, year).

Executed (signed) on ______________ (date).

Antonio Gebb
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.